Council 67, and the Western States Dairy Council[1] went to New York and there with the aid of New York Local 277, whose members worked for N. Dorman and Company, urged the latter to cease dealing with the Association until bargaining was resumed (R. 223). On July 26, 1955 and on two other subsequent dates, the representatives of Local 976 and Joint Council 67 picketed the trucks of respondent Dairy Distributors at Dorman's loading platform (R. 223-227). It was principally these incidents which induced Dorman to cease doing business with respondent, allegedly causing the latter to liquidate its business and giving rise to the present course of litigation.

B.

The Proceedings Below

1. State Court Proceedings

The respondent Dairy Distributors brought an action in the District Court of the Third Judicial District of Utah in and for Salt Lake County for $125,000 damages, alleging destruction of its business by reason of the above picketing activities (R. 28). The action was founded entirely upon Section 303 of the Labor-Management Relations Act, vesting concurrent jurisdiction upon United States District Courts and state courts having jurisdiction of the parties. Petitioner, Western Conference of Teamsters, and the International Brotherhood of Teamsters were joined as defendants, but no specific activities on their part were

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[1] Joint Council 67 is a council or association of Teamsters Local Unions in the Salt Lake City area (R. 84). The Western States Dairy Council is a council or association of local unions in eleven Western States that represent employees in the dairy industry, and is affiliated with the Western Conference of Teamsters (R. 74-75, 84-85). The petitioner, Western Conference of Teamsters, is an association of Teamsters Local and Joint Councils in the eleven Western States and is an affiliate of the International Brotherhood of Teamsters. All of these labor associations are separate entities functioning autonomously. (R. 74, 80-81).

alleged. Defendant Western Conference (petitioner here) answered, denying the allegations of the complaint and asserting that it was not subject to service of process in the State of Utah (R. 237, 238).

The case was tried in October of 1957 before an eight-man jury. During the course of trial, Western Conference moved the court to dismiss on the grounds that it is not subject to service of process in Utah and is not a "labor organization" within the meaning of the Act. The motion was denied. The jury returned a verdict against all defendants in the amount of $100,000 and judgment was entered thereon. (R. 240, 241).

Thereafter, defendants filed appropriate motions for judgment in their favor notwithstanding the verdict, and for a new trial, which motions were denied (R. 241-243).

The case was then appealed to the Supreme Court of Utah, the defendants (including petitioner) assigning as error, *inter alia*, plaintiff's failure to establish a case under Section 303 of the Act, lack of jurisdiction over the subject matter as to the Western Conference, lack of jurisdiction over the person of Western Conference and the International Union, and failure to grant a directed verdict on the ground that plaintiff was unlawfully engaged in interstate commerce at the times complained of. (R. 35-37). The Supreme Court of Utah affirmed the jugment below, two of the five justices concurring in the results only (R. 220, 221).

Following such decision, defendants filed a petition for rehearing (R. 38, 39), which petition was denied on January 26, 1959 (R. 221).

Defendants then petitioned this Court for a Writ of Certiorari, submitting as reasons for the grant thereof, the following:

1. The Western Conference and the International Union could not be held responsible under Section 301(e) for the alleged unlawful picketing.

2. The picketing involved did not violate Section 303.

3. The injury to respondent's business was not caused by a violation of the Act, as required by Section 303(b). The damages awarded were speculative and excessive. Damages should not be awarded to respondent, as it operated unlawfully in interstate commerce without an ICC permit.

This Cou ' denied the petition (App. "B").

2. Subsequent Federal Court Proceedings

Petitioner, Western Conference of Teamsters, brought an action in equity in the United States District Court for the District of Utah, Central Division, seeking to enjoin the enforcement of the state court judgment against petitioner. Jurisdiction of the court was invoked pursuant to 28 USC §§ 1332 and 1337. In support of the action, petitioner asserted the following:

(a) The state court was without jurisdiction over the subject matter, in that Petitioner is not a "labor organization" within the meaning of the Labor-Management Relations Act.

(b) The state court did not acquire personal jurisdiction over petitioner, as service of process was not properly effected.

(c) Respondent was not entitled to recover on account of injury to a business operated illegally without proper authority from the ICC.

(d) Respondent, in the state court trial, failed to disclose that Local 277 in New York had been enjoined in another action, and thus deprived petitioner of a defense that respondent's business could not have been damaged by the conduct of Local 277, and practiced fraud upon the court. (R.1).

The issues set forth above were delineated in the pre-

trial order of the United States Judge (R. 43, 44). The respondent, defendant below, interposed motions to dismiss and for summary judgment, principally on the ground that the issues raised by petitioner had been determined and adjudicated in the state courts (R. 39, 43). These motions were denied and the case went to trial in the United States District Court.

During the course of trial, petitioner proved the facts as set forth above relating to the operation of respondent's business in hauling cheese and other commodities in interstate commerce without authority from the Interstate Commerce Commission (R. 94-97, 106-110, 259-260, 262-264, 267-271).

It was further proved that the purported service of process upon petitioner in the state court was had upon one Ballew, who was neither an employee or agent of petitioner nor acting on its behalft in any capacity. The evidence showed that Ballew was at that time employed by the Western States Dairy Employees Council, which association operated independently without any direction or control on the part of petitioner. Moreover, petitioner had no property or place of business in the State of Utah and did no business therein (R. 57, 69-82, 125-127).

With respect to petitioner's allegation that the state court was without jurisdiction of the subject matter, it was developed in the record that Western Conference of Teamsters does not exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Further, said petitioner is not an organization in which employees participate respecting conditions of work and is not an organization in which employees are eligible to membership or affiliation (R. 55-66).

On the basis of the foregoing evidence, the judge found

the issues in favor of petitioner[2] and issued a judgment and decree perpetually enjoining respondent from enforcing its state court judgment against petitioner (R. 51).

Respondent then appealed to the United States Court of Appeals for the Tenth Circuit, urging that the issues raised by petitioner had been adjudicated in the state courts and thus subject to the doctrine of res judicata and that, in any event, petitioner is a "labor organization" within the meaning of the Act and there was insufficient evidence to support the finding that respondent's business was illegal under the Interstate Commerce Act.

The Court of Appeals held that consideration of the matter of the state court's jurisdiction, both of subject matter and of person, is now barred by the doctrine of res judicata. The court recognized that the state court ruling respecting its jurisdiction over the subject matter depends upon "an interpretation of Sec. 2(5) of the Act and the correctness of such rulings is of utmost importance in the administration of the Act", but concluded that adequate protection lies in the Supreme Court's power to review such state court rulings by certiorari. The court concluded that the Supreme Court's denial of certiorari from the judgment of the Utah Supreme Court served "to establish the finality of the judgment as between the particular parties."

Respecting petitioner's contention that respondent's operation was in violation of the ICA, the court noted that "the opinion of the Supreme Court of Utah may indicate that that court considered this point upon an erroneous assumption of fact"[3] and, further, "we cannot clearly de-

[2] Except that as to the issue of fraud, the judge found the evidence insufficient.

[3] This has reference to the fact that the Utah Supreme Court apparently proceeded on the assumption that respondent does possess an ICC permit, despite respondent's admission to the contrary. 329 P.2d at 420.

termine whether the Utah Court considered and acted upon the issue." The court nevertheless went on to hold that the issue may not be raised by petitioner in defense, since the ICA provides for remedy for violations thereunder before the ICC and limits the role of the courts to reviewing orders of that body.

As to the fraud issue, the court held with the District Court that the claim lacks merit and held it barred by res judicata.

Accordingly, the court reversed and remanded with directions to vacate the injunction. Petition for rehearing was denied on October 3, 1961.

REASONS FOR GRANTING OF WRIT

I.

THIS CASE INVOLVES IMPORTANT ISSUES OF FEDERAL LAW, NAMELY, WHETHER THE DOCTRINE OF RES JUDICATA PRECLUDES A FEDERAL COURT FROM CORRECTING A STATE COURT'S ERRONEOUS DETERMINATION OF FEDERAL LAW, AND WHETHER A FEDERAL COURT HAS AUTHORITY TO ENJOIN THE ENFORCEMENT OF A STATE COURT JUDGMENT WHICH FAILED TO ACCOMMODATE TWO FEDERAL LAWS BY PERMITTING RECOVERY OF DAMAGES UNDER ONE FOR INJURY TO A BUSINESS OPERATED IN VIOLATION OF ANOTHER.

The basic issues in this case fully warrant review by this Court. The court below has decided important questions of Federal law which should be settled by this Court and which are probably in conflict with applicable decisions of this Court. The first issue is whether the Federal courts have jurisdiction and authority in collateral proceedings

(as distinguished from direct review by appeal or writ of certiorari to this Court) to examine and correct determination of state courts interpreting Federal law where such interpretations are clearly in error and repugnant to Congressional intent. The extent to which the doctrine of res judicata should be relaxed in such a situation has been suggested but not finally decided by this Court. To permit such relaxation in the circumstances of the present case, typical of many others, would be to provide a method of determination of Federal issues by the Federal courts without the necessity of burdening this Court with review of the many decisions of state courts on Federal questions, where the issues may not be of sufficient importance to warrant the granting of an appeal or a writ of certiorari. It would make for a uniformity of interpretation that would not otherwise be possible without imposing impossible burdens on this Court. In the present case the Supreme Court of Utah, in another proceeding, has announced an interpretation of the Taft-Hartley Act which seems obviously in error and which a Federal District Court has undertaken to correct by means of enjoining the enforcement of a judgment for damages granted as a result of such interpretation. But the court below has reversed on the ground that the doctrine of res judicata bars further Federal consideration of the state determination, particularly where review of the state court decision has been denied by this Court.

An incidental important question of Federal law which can be adjudicated by the Federal courts, although it need not necessarily be decided by this Court if the collateral proceedings in the district court are sustained, involves the issue of whether Section 2 (5) of the Taft-Hartley Act defining the term "labor organization" embraces such entities as "conferences." A determination of the question, important to the administration of the National Labor Relations Act as amended, is one which the Federal courts should be given an opportunity to make.

A final important question of Federal law which should be settled by this Court is that of the degree to which two non-conflicting Federal statutes in the same field should be accommodated or harmonized so as to bar a person operating a business in violation of the policies and provisions of the one statute from benefitting thereby by resorting to the other for claimed injury to said business.

The remaining portions of this petition will elaborate on the foregoing and make reference to the applicable law.

II.

THE STATE COURTS CLEARLY MISAPPLIED FEDERAL LAW IN ASSERTING JURISDICTION OVER SUBJECT MATTER. CONSIDERATION OF THIS ISSUE BY THE FEDERAL DISTRICT COURT IS NOT BARRED BY THE DOCTRINE OF RES JUDICATA.

A. Section 303 of the Labor Management Relations Act makes unlawful certain activities on the part of a "labor organization" and permits injured persons to bring suit for damages in United States or state courts, "subject to the limitations and provisions of section 301 hereof." Section 301, in turn, refers to violations by "a labor organization representing employees in an industry affecting commerce as defined by this Act." The sole definition of "labor organization" in the Act appears in Section 2(5), which provides:

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

As appears in the record and as found by the United States District Court, the Western Conference of Team-

sters does not fall within the foregoing definition, in that it is not an organization in which employees participate and does not exist for the purpose of dealing with employees concerning any of the subjects mentioned.

Petitioner's exclusion from the operation of the Act has been made patently clear by legislative history. Thus, Senator Goldwater specifically referred to petitioner during Senate consideration of a proposed amendment to the definition of "labor organization", declaring:

> "The Amendment would modify the definition of a 'labor organization' contained in the committee bill. The committee bill, as in both the Wagner and Taft-Hartley Acts, defines a 'labor organization' as one in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining. Conferences, such as the Western Conference of Teamsters . . . are not composed of employees and do not engage in collective bargaining. The committee bill's definition thus does not include any conference, joint board, joint council, or other association or aggregation of representatives of labor unions, thus freeing them from the sanctions, prohibitions, and other requirements of the bill."
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> "What is of great concern, Mr. President, is the fact that the committee bill does not even cover the Western Conference of Teamsters. . . ." (Cong. Record, Senate, April 23, 1959)

Petitioner was once again mentioned specifically in the same session of Congress. In discussing the Act's definition of a "labor organization", a Senate Report referred to the regional conferences into which the Teamsters are divided, particularly the Western Conference, and stated: "Associations of this kind are not labor organizations under existing

law nor would they be under the committee bill . . ." *Cong. Rec., Senate Report 187, 86th Cong., Par. XX.*[4]

As late as September 19, 1961, it was made evident that Congress continues to adhere to its original intention respecting the scope of Section 2(5). On that date, Senator McClellan and others introduced a bill (S. 2573) designed to amend the Anti-Trust laws to prohibit certain activities by labor organizations. The Bill defines "labor organization" to include "any national or international labor organization or federation thereof, and any conference, general committee, joint or system board, joint council or parent, regional, state, or local central labor body." The Analysis of this portion of the Bill states:

> "The approach involved here is that used in the definition of the Landrum-Griffin Act, but broadened so as to include labor organizations which the Landrum-Griffin Act fails to cover such as State or local central bodies." (107 Cong. Record (daily) pp. 18943, 18944—September 19, 1961).

In light of the above, it is apparent that the Western Conference of Teamsters is exempt from the prohibition of Section 303 and that the state court's assertion of jurisdiction, on the basis of that Section, constituted a misinterpretation and misapplication of the Federal Act in disregard of a clear Congressional mandate.

B. In *Chicot County Drainage District* v. *Boston State Bank*, 308 U.S. 371, this Court rather strictly applied the doctrine of res judicata principally relied upon by the Court below. In subsequent cases, however, the Court

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[4] It should be noted, in this connection, that the NLRB has consistently held that Teamster Area Trade Divisions, affiliated with Teamster Conferences, are not "labor organizations" within the meaning of the Act. *Seaboard Warehouse Terminals*, 123 NLRB No. 48; *Glass Arts, Inc.*, 124 NLRB No. 192. (Footnote ours)

has indicated that the doctrine was not to be generally applied in mechanical fashion. In *Kalb* v. *Feuerstein*, 308 U.S. 433, for example, debtor farmers against whom foreclosure judgment had been obtained by mortgagees in a Wisconsin County Court petitioned a federal court for composition of their debts under the Bankruptcy (Frazier-Lemke) Act. While the petition was pending, the Wisconsin Supreme Court affirmed the foreclosure judgment, holding that the Federal Act did not oust the state courts of jurisdiction over subject matter. Upon grant of Certiorari, this Court noted, in language appropriate to the instant case, that if the Frazier-Lemke Act does oust the state courts of jurisdiction upon the filing of the petition, the state court's decision—

> "was not merely erroneous but was beyond its power, void, and subject to collateral attack. And the determination whether the Act did so operate is a construction of that Act and a federal question." (at 438).

The Court held with the petitioner, reversing the state court judgment.

Again, in *United States v. U.S. Fidelity Co.*, 309 U.S. 506, the Court held that a decision of a Missouri District Court, allowing a cross-claim against the United States, did not bar the United States from successfully asserting, in a subsequent action brought by it, that the first court was without jurisdiction respecting the cross claim because of the doctrine of sovereign immunity. The Court distinguished *Chicot County* in the following manner:

> "In the *Chicot County* case no inflexible rule as to collateral objection in general to judgments was declared . . . No examination was made of the *susceptibility to such objection of* numerous groups of judgments concerning status, extra-territorial action of courts, or *strictly jurisdictional and quasi-jurisdictional facts.*" (at 514) (emphasis supplied)

In *Denver Building and Construction Trades Council v. National Labor Relations Board*, 186 F. 2d 326[5], the United States Court of Appeals for the District of Columbia held that a decision of the United States District Court of Colorado, to the effect that in a particular labor dispute federal jurisdictional requisites were not met and hence an injunction could not issue, was not res judicata as to the jurisdictional question when the same dispute came before the National Labor Relations Board and the United States Court of Appeals. In a statement particularly appropriate to the present case, the Court of Appeals said (at page 332):

> "Where the application of the judicial doctrine res judicata would be inconsistent with the method devised by Congress the doctrine will not be enforced by the courts. Kalb v. Feuerstein, 1940, 308 U.S. 433, 444, 60 S. Ct., 343, 84 L.Ed. 370. It is for this reason we hold against the contention of petitioners, and not because of lack of any of the elements which usually make out a case for the application of res judicata. The doctrine is not to be used where the circumstances create a semblance of conditions for its application but to apply it would submerge the plan of Congress for the administration and enforcement of its policy."

Using the fact situations of some of the above cases as illustrations, the Restatement of Judgments, Para. 10 (1942) states the prevailing rule as follows:

> "(1) Where a court has jurisdiction over the parties and determines that it has jurisdiction over the subject matter, the parties cannot collaterally attack the judgment on the ground that the court does not have jurisdiction over the subject matter, *unless the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond its jurisdiction.* (emphasis supplied)

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[5] Rev'd on other grounds, 341 U.S. 675.

(2) Among the factors appropriate to be considered in determining that collateral attack should be permitted are that

(a) the lack of jurisdiction over the subject matter was clear;

(b) the determination as to jurisdiction depended upon a question of law, rather than of fact;

(c) the court was one of limited and not of general jurisdiction;

(d) the question of jurisdiction was not actually litigated;

(e) the policy against the court's acting beyond its jurisdiction is strong."

Petitioner submits that factors (a), (b), (c) and (e) are firmly established in this case. First, that the state court's lack of jurisdiction over subject matter is clear was demonstrated under point 1 above. Second, while the interpretation of Section 303 and its application involved a mixed question of law and fact, the question should have been disposed of as a matter of law in view of the legislative history. Third, in deciding cases under the Labor Management Relations Act, a state court is one of strictly limited jurisdiction, its jurisdictional boundaries being precisely defined in Sections 303 and 301 of the Act.

Most crucial, however, is the importance of the policy against the state court's acting beyond its jurisdiction. Congress has clearly indicated that the Labor Management Relations Act is to govern solely the tri-partite relationship between employers, labor organizations, and employees in the context of collective bargaining, based on its finding that it is precisely in this area that disputes have occurred, and may again occur, "affecting commerce".[4] And, con-

[4] The Act's Declaration of Policy states:

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both

versely, Congress determined that activities of *associations of labor unions* that do *not* operate in this well defined area are not likely to "affect commerce" and therefore should not be subject to regulation under the Act. Accordingly, in conformity with the foregoing determinations and objectives, Congress narrowly defined a "labor organization," and hence the scope of the Act, as one in which employees participate and one which engages in collective bargaining. It is this clearly defined Congressional policy that the state court's decision contravened. That decision stands as a dangerous precedent not only for the Western Conference, but for all other associations and conferences in the labor movement that do not constitute a "labor organization" within the meaning of the Act.[7]

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employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of *individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce* and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes *affecting commerce*. (emphasis supplied).

Section 1 of the Act provides in part:

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions in the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred *by encouraging the practice and procedure of collective bargaining* and by protecting the exercise by workers of full freedom of association, self-organization, and *designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection*." (emphasis supplied)

[7] E.g., Alpert v. Local 271, Hod Carriers (D.C. R.I. 1961), 48 LRRM 3043 (held, R.I. Allied Bldg. Trades Council not a "labor organization").

Although Section 303 vests concurrent jurisdiction in state and federal courts, the structure of the Act and decisions of this Court[8] make it plain that the federal law is exclusive in the field and must be interpreted uniformly throughout the 50 states of the union. Thus, as stated by the Court below, the correctness of the decision of the state courts in the instant case involving the very scope of the Act "is of utmost importance in the administration of the Act."[9] Where, as here, the state courts assert jurisdiction of the subject matter upon an interpretation of federal law that has the effect of enlarging the scope thereof in clear contravention of Congressional policy, the Federal District Courts should not be denied the right to exercise a corrective function.[10]

Petitioner respectfully submits that the foregoing considerations far outweigh the policy underlying the doctrine of res judicata and justify the granting of a writ of certiorari.

[8] e.g., *P.S. Guss* v. *Utah Labor Relations Board*, 353 U.S. 1; *Garner* v. *Teamsters Local 776*, 346 U.S. 485.

[9] The opinion of the Court below that nevertheless the power of certiorari may effectively safeguard against errant applications of the Act by state courts seems unrealistic in view of this Court's increasing caseload and decreasing grants of certiorari. (See 75 Harv. Law. Rev. 83 (1961)).

[10] The conclusion of the Court below that this Court's denial of certiorari in the first action established "the finality of the judgment" and thus gave rise to the bar of res judicata ignores the Supreme Court cases previously cited and misconceives the import of a denial of certiorari. This Court has repeatedly held that a denial of certiorari is to have no more meaning than an indication that 4 or more members of the Court, for whatever reason, do not now wish to review the case submitted. *Darr* v. *Burford*, 339 U.S. 200, 226-228 *Maryland* v. *Baltimore Radio Show*, 338 U.S. 912, 917-920. Moreover, the Court has in the past granted second applications for certiorari upon subsequent litigation in the courts below by the same parties respecting the same issues as those involved in a case wherein certiorari had once been denied. *Brown* v. *Allen*, 344 U.S. 443; *Sunal* v. *Large*, 332 U.S. 174.

III

FEDERAL COURTS MAY ACT TO PROTECT AND UPHOLD THE POLICIES OF THE INTERSTATE COMMERCE ACT, EVEN THOUGH SUCH MATTERS HAD NOT BEEN FIRST PRESENTED TO AND ACTED UPON BY THE INTERSTATE COMMERCE COMMISSION, IN THE INTEREST OF ACCOMMODATING AND HARMONIZING FEDERAL LAWS.

A. The Interstate Commerce Act (49 USC 1, et seq.) defines a "contract carrier" (Para. 303(a) (15)) and provides that no person shall engage in operations in interstate commerce as a "contract carrier" without having first secured a permit from the ICC (Sec. 309). The Act also makes it a criminal offense for any person knowingly and willfully to violate any of its provisions (Sec. 322).

The evidence introduced in the District Court proved that respondent operated as a "contract carrier" and respondent admitted that it did so without an ICC permit. The issue of law thus posed was whether respondent may recover damages pursuant to one federal law for injury to a business that has been operated, since the beginning of its existence, in criminal violation of another federal law. The Federal District Court answered in the negative and enjoined the enforcement of the state court judgment.

The court below neither overturned the fact findings of the District Court nor interposed the bar of res judicata.[11] It held instead that, under the ICA, the sole allowable ac-

[11] Respecting res judicata, the court below noted that the Supreme Court of Utah, having held that respondent did have an ICC permit in the face of the latter's admission to the contrary, apparently "considered this point upon an erroneous assumption of fact." The court below added: "From the record before us and the opinion of the Supreme Court of Utah, we cannot clearly determine whether the Utah court considered and acted upon the issue."

tion lies before the ICC and the role of the courts is limited to reviewing the action of that body. Accordingly it stated that petitioner may not raise a violation of the ICA as a defense in any action brought in the courts. It is respectfully submitted that the opinion of the Court below overlooks the basic necessity of accommodating the policies of the various federal laws in the national interest.

B. While the Interstate Commerce Act may provide only for its use as a sword before the ICC, Petitioner's reliance on its terms as a shield is not precluded. Were petitioner's contention adopted, respondent would not have been "punished", in the affirmative sense used in the Act, but merely precluded from taking advantage of one federal law to promote a venture in violation of another. On this matter, the ICA is silent. Surely, Congress could not have intended, by its silence, to preclude litigants from relying on *the policies underlying the Act*, and thus promoting them, in any manner other than that specifically expressed. For, as stated by this Court:

> "When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted." *Sola Elec. Co.* v. *Jefferson Elec. Co.*, 317 U.S. 173.

In *Sage* v. *Hampe*, 235 U.S. 99, this Court had before it a decision of the Supreme Court of Kansas awarding damages to plaintiff on the ground that defendant breached a contract for the sale of land, which land was not his in that it had been allotted to an Indian tribe by an Act of Congress. The decision below was reversed, Mr. Justice Holmes writing as follows:

> "The defendant relied upon the Act of Congress as a defense and is entitled to come to this court. It has long

been recognized that contracts that obviously and directly tend in a marked degree to bring about results that the law seeks to prevent cannot be made the ground of a successful suit. . . . The policy involved here is the policy of the United States. It is not a matter that the States can regard or disregard at their will. . . . *As . . . the contract contravenes the policy of the law, there is no reason why the law should not be read, if necessary, as broad enough to embrace it in terms.*" (emphasis supplied)

The importance of the mutual accommodation of federal laws has long been recognized by this Court. *In Southern S.S. Co. v. NLRB*, 316 U.S. 31, the Court made it clear that the accommodation principle is specifically applicable to the enforcement and administration of the Labor Management Relations Act. There, the National Labor Relations Board found that the Company's discharge of five seamen represented by the NMU violated Section 8(3) of the LMRA, in that it was based upon the seamen's participation in a protected strike on board a Company vessel docked at Houston. The Board ordered the Company to reinstate the five individuals with back pay. This Court held that the order of reinstatement be set aside because the five men were guilty of mutiny under Sections 292 and 293 of the Criminal Code.[12] In language that appears conclusive as to the instance case, the Court said:

> "It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly, that it may wholly ignore other and equally important Congressional objectives. Frequently, the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."

[12] Significantly, that statute, as the ICA, provides for criminal penalties, but makes no mention of its use in defense.

In a subsequent case, a possible conflict between the ICA and the LMRA was before this Court. *Local 1976, U.B.C. & J. v. NLRB*, 357 U.S. 93. The principle issue in the case was whether a "hot cargo" agreement between an employer and a union constitutes a defense for union activities that would otherwise violate the secondary boycott provisions of the Act. One of the contentions advanced by the Board was that the stated defense would not lie because, where the employer is an interstate carrier, the "hot cargo" agreement is void *ab initio* under the ICA. This contention was rejected by a majority of the Court on the ground that a possible violation of the ICA may not give rise to a separate violation under the LMRA. In distinguishing *Southern Steamship*, the Court stated:

> [In *Southern Steamship*] a specific remedy ordered by the Board . . . *worked directly to weaken the effectiveness of a statutory prohibition* against mutiny by members of the crew of a vessel. Presumed illegality under the mutiny statute *was not used to establish a violation of the labor statute*." (emphasis supplied)

The foregoing indicates that the instant case is akin to *Southern Steamship*, but unlike *Local 1976*. For here, as in the former case, petitioner relies on the ICA *not to establish a violation of the LMRA* but to deprive respondent of a remedy under the latter that would directly weaken the effectiveness of the former. And here, as in *Southern Steamship*, it is not too much to demand that the state and federal courts undertake the task of accommodation where recovery under the LMRA would seriously impair the Congressional policy underlying the ICA.

C. A brief examination of I.C.A. policy will make manifest the gravity of the conflict involved herein. The National Transportation Policy of the United States is expressed by Congress as follows:

"It is hereby declared to be the national transporta-

tion policy of the Congress *to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act . . .* so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster *sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; . . .* All of the provisions of this Act shall be administered and enforced with a view of carrying out the above declaration of policy." (emphasis added)[13]

The operations of respondent, Dairy Distributors, were in violation of the spirit, as well as the letter, of this policy. One dangerous aspect of its unlawful operation was its transportation of commodities for rates that may not have been competitive. Another was the diversion of traffic which would otherwise have been transported by regulated, authorized carriers as desired by Congress.

The operations of respondent, Dairy Distributors, when viewed as part ~~were in~~ of a pattern of similar operations, exercised a substantial impact on the transportation industry. Unauthorized transportation activity has been variously estimated as accounting for from about 4.5% to about 25% of the total intercity ton-miles for the for-hire and private trucking operations.[14] Increasingly, informed commentators are speaking out about the necessity of bringing unauthorized carriage under control, because "moonlighters" are at a competitive ad-

[13] Ch. 722, Tit. I, §1, 54 Stat. 899 (1940), also appearing in note preceding 49 U.S.C. §1.

[14] Interstate Commerce Commission, Bureau of Transport Economies and Statistics, Statement No. 6010, "Gray Area of Transportation Operations", p. 13 (1960); "Traffic World", Vol. 107, No. 9, p. 29 (March 4, 1961).

vantage and are able to divert substantial amounts of traffic from the certified carriers, resulting in many instances in the crippling of rate structures.[15] The entire transportation industry has been adversely affected.

D. Petitioner submits that as the decision below and those of the Utah State Courts condone and encourage the contravention of the National Transportation Policy, deprive litigants of the right to rely on said Policy in the courts, and fail completely to accommodate the directly conflicting policies of the Labor Management Relations Act and the Interstate Commerce Act, contrary to the direction of this Court, the intervention of this court is required.

CONCLUSION

It is respectfully submitted that, for the reasons asserted above, this Petition for a Writ of Certiorari should be granted.

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[15] See, e.g., John P. Doyle Report for the Committee on Interstate and Foreign Commerce, U. S. Senate, pp 507-514 (1961).

Appendix "A"

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

July Term, 1961

DAIRY DISTRIBUTORS, INC., *Appellant*, vs. WESTERN CONFERENCE OF TEAMSTERS, *Appellee*.	No. 6629

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Arthur A. Allen (Hanson, Baldwin & Allen were with him on the brief) for Appellant.

Elias Hansen (Clarence M. Beck and A. Park Smoot were with him on the brief) for Appellee.

Douglas McHendrie (John F. Mueller and Grant, Shafroth, Toll and McHendrie were with him on the brief) for Amici Curiae.

Before PHILLIPS, PICKETT and LEWIS, Circuit Judges.

LEWIS, Circuit Judge.

This appeal is taken from a decree of the District Court for the District of Utah which perpetually enjoined Dairy Distributors, Inc. from enforcing a judgment for $100,000 obtained against the Western Conference of Teamsters in

the state courts of Utah. Appellant's basic contention of error is that the United States District Court has but relitigated issues fully determined in the state court action and has premised the injunction upon findings of fact and conclusions of law that are in simple disagreement with the findings and conclusions of the state court. The United States District Court so says appellant, has undertaken to sit in appellate review upon a state court case after that case has been set at final rest by the Supreme Court of Utah. Appellee defends the issuance of the injunction upon the ground that the federal district court has correctly found that the state court judgment was without jurisdictional foundation of either person or subject matter and upon issues involving a federal question. We will hereafter refer to appellant here and plaintiff in the state court action as the Company and appellee here and defendant in state court as Western Conference.

The factual background of the controversy as it developed and reached the state courts of Utah is fully set forth in the opinion of the Supreme Court of Utah. See *Dairy Distributors* v. *Local Union 976*, 8 Utah 2d 124, 329 P. 2d 414, cert. den. 360 U.S. 909. In brief, the action was brought by the Company to recover for damages occasioned by Local-Union 976, Joint Council 67, Western Conference, The International Brotherhood of Teamsters, and others, through conduct prohibited by 29, U.S.C.A. 187 (Sec. 303, Labor Management Relations Act, 61 Stat 158).[1] Jurisdic-

[1] 29 U.S.C.A. 187.

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

tion of such a cause of action is granted to state courts having jurisdiction of the parties by Sec. 303(b) of the Act. Jurisdiction also specifically lies in the district court of the United States.

Among the defenses advanced by Western Conference in the state court action were the claims that service of process was invalid and that the state court lacked jurisdiction of the subject matter as it applied to Western Conference. Specifically, Western Conference contended that it was not a labor organization as that term is included in the provisions of the Labor Management Act.[2] Both issues were decided adversely to Western Conference in the state trial court and presented to the Utah Supreme Court on appeal. That high court held, 329 P. 2d 414 at 419:

> "Defendant's Point II contends that the Western Conference of Teamsters is exempt from this litigation, not being a labor organization within the contemplation of Title 29, Sec. 152(5) U.S.C.A. There is evidence in the

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"(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

• • • • • • • • • "

[2] Sec. 2(5), 29 U.S.C.A. 152(5).

"The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

record to indicate that Western Conference of Teamsters had jurisdiction over local teamster unions in the 11 western states; that Local 976, of which Rash was an officer, was affiliated with the Western Conference, and that it in turn was affiliated with the International Union. Under such circumstances we cannot say that the Western Conference of Teamsters was not a labor organization under the broad definition of the act."

But both issues were found by the United States District Court in favor of Western Conference as follow:

"IV. The purported service of process upon Western Conference of Teamsters in the aforementioned state court case was had upon one Joseph Ballew. The court finds that at the time the said Joseph Ballew was so served he was a stranger to Western Conference of Teamsters in that he was not an employee, officer, general agent or other agent of the plaintiff herein nor had he ever been, nor was he at that time or ever authorized by appointment nor by law to receive service for or in behalf of the plaintiff herein. Plaintiff Western Conference of Teamsters, during all times mentioned in the state court action, had no property in the State of Utah, neither did it have, nor did it hold itself out as having, an office or place of business in the State of Utah, nor did it do any business in the State of Utah."

"VII. The court finds that plaintiff, Western Conference of Teamsters, is not and never has been an organization in which employees participate respecting hours or conditions of work and labor or an organization in which employees are eligible to membership or affiliation, within the meaning of the 'Labor Management Relations Act, 1947'."

The grant of jurisdiction to state courts to try and decide certain issues arising under the Labor Management Act carries with it the inherent power to interpret the Act

and to decide factual matters necessary for the proper and lawful administration of the Act. The grant of such jurisdiction to state courts and the similar grant to the United States District Court does not contemplate a dual remedy or a dry run in either court. It does contemplate a finality of determination in either jurisdiction of every proper issue presented. The rule is not altered nor weakened by the event that the issue may reach the field of jurisdiction when that subject is dependent upon fact affecting person or subject matter. The issue of jurisdiction must reach finality the same as any other issue. *Lewis* v. *Carver*, 10 Cir. 237 F. 2d 516; *American Surety of New York* v. *Baldwin*, 267 U.S. 156, 53 S. Ct. 98, 77 L. Ed. 231; *Treinies* v. *Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85. Here, Western Conference entered the state court to litigate the issue, among others, of the validity of the service of process upon one Ballew (or Ballou) as an agent of Western Conference. The state trial court, upon consideration of evidence which is neither before us nor was before the United States District Court, determined Ballew to be an agent of Western Conference and accordingly found a valid service of process upon Western Conference. This judgment was affirmed against direct attack in the Supreme Court of Utah. Had this issue originated in the United States District Court our present review would have concerned the evidence viewed by the federal trial court as demonstrating that no such agency existed. But we make no such review. On a similar contest of jurisdiction, the United States Supreme Court has held:

> "The substantial matter for determination is whether the judgment amounts to *res judicata* on the question of the jurisdiction of the court which rendered it over the person of the respondent. It is of no moment that the appearance was a special one expressly saving any submission to such jurisdiction. . . . The special appearance gives point to the fact that the respondent entered the

Missouri court for the very purpose of litigating the question of jurisdiction over its person. It has the election not to appear at all. If, in the absence of appearance, the court had proceeded to judgment and the present suit had been brought thereon, respondent could have raised and tried out the issue in the present action, because it would never have had its day in court with respect to jurisdiction . . . It had also the right to appeal from the decision of the Missouri District Court, . . . It elected to follow neither of those courses, but, after having been defeated upon full hearing in its contention as to jurisdiction, it took no further steps, and the judgment in question resulted." Baldwin v. Iowa State Traveling Men's Association, 283 U.S. 522 at 524, 51 S. Ct. 517, 75 L. Ed. 1244.

We think it clear that the determination of the Utah court that it had jurisdiction over the person of Western Conference through the service of process upon one found to be an agent of Western Conference is res judicata of that issue. The necessity of examining the question of agency is often the pivotal point in determining jurisdiction of either person or subject matter and can and does form the premise of the doctrine of res judicata as between state and federal courts. In *McCarthy* v. *State, et al.*, 1 Utah 2d 205, 265 P. 2d 387, the Supreme Court of Utah applied the principle of finality of judgment where the federal court had earlier considered the claim of agency of state officers acting under the compulsion of a state statute. The federal court had dismissed the action because the named individual defendants were not the real parties in interest. Such ruling required a determination of agency and an interpretation of a state statute. The action was then filed in the state court and was dismissed as being res judicata. In affirming this dismissal the Utah Court stated:

"The issue was settled by the Federal Court, as herein-

above indicated, and it was not the prerogative of the State District Court nor of this Court on appeal to review or reverse that decision. Whether its judgment was right or wrong, it stands unassailed and is binding upon the parties. Any other view would create uncertainty by undermining the conclusive character of judgments and would permit the revival of litigation once terminated; consequences which it was the very purpose of the doctrine of res judicata to avoid."

Western Conference strenuously urges that it is not a labor organization within the bounds of that term as defined in the Labor-Management Act and that a determination to the contrary in a state court cannot be res judicata upon such an issue. The ruling does, of course, require a determination and application of fact to an interpretation of Sec. 2(5) of the Act and the correctness of such rulings is of utmost importance in the administration of the Act. But adequate protection against the frustration of federal law by unsound interpretation or application in state courts lies in the power of the Supreme Court of the United States to review by certiorari the judgments of state supreme courts upon matters of federal or constitutional law. In *Morris* v. *Alabama*, 294 U.S. 587, 55 S. Ct. 579, 79 L. Ed. 1074, the power and duty is recognized by Mr. Justice Hughes thus:

"That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a State court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights. Thus, whenever a conclusion of law of a state court as to a federal right and findings of fact are

so intermingled that the latter control the former, it is incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured."

In the instant case certiorari was sought and denied by the Supreme Court of the United States from the judgment of the Supreme Court of Utah. Such denial does not establish the correctness of the particular judgment but serves only to establish the finality of the judgment as between the particular parties. The same issue cannot be renewed by initiation of an action in the United States District Court.

Amici Curiae join Western Conference in arguing that it has now been admitted that the appellant company held no certificate of public convenience and necessity required by the Interstate Commerce Commission as a condition to doing business as an interstate contract carrier;[3]—that the evidence demonstrates that the appellant was operating an interstate trucking business without authority; and that for these reasons appellant should be denied enforcement of its judgment.

The Interstate Commerce Act does not provide for court action for violation of the provisions of that act, but does provide, 49 U.S.C.A. 13(1):

"(1) Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complain-

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[3] The opinion of the Supreme Court of Utah may indicate that that Court considered this point upon an erroneous assumption of fact. 329 P. 2d 414 at 420. If so, the proper remedy lay in urging the Utah Court to correct such error. We consider the contention only because from the record before us and the opinion of the Supreme Court of Utah we cannot clearly determine whether the Utah court considered and acted upon the issue.

ing of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

and, 49 U.S.C.A. 12(1):

"(1) The Commission shall have authority, in order to perform the duties and carry out the objects for which it was created, to inquire into and report on the management of the business of all common carriers subject to the provisions of this chapter, . . . The Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any United States attorney to whom the Commission may apply to institute in the proper court . . . all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof. . . ."

It is clear that the matters of interstate transportation of goods were entrusted to the Commission by Congress and the role of the courts in the administration of the policies is limited to enforcing, enjoining, setting aside,

annulling or suspending orders of that body, 28 U.S.C.A. 1336, 28 U.S.C.A. 2321, 49 U.S.C.A. 16. The record here indicates that the Commission has licensed the appellant as a private carrier; no complaint of this action has been made to the Commission; and if damage arose as a result of improper licensing or improper use of the granted certificate, it is not apparent.

Appellee has not cited us to a case where such a defense was interposed in a court action sounding in tort, nor do we think such defense proper. The commission has the facilities and powers to investigate all such matters and is charged with the responsibility of administering the Act in all its facets. The courts may not usurp its power in the guise of determination of a civil suit.

Finally, Western Conference contends that it was deprived of the opportunity of defending, in full, the state court action because of extrinsic fraud perpetrated by the Company. This contention was presented to the state trial court by post-trial motion and was there rejected. It was also presented to the United States District Court and was similarly rejected. Fraud is within the doctrine of res judicata, Heiser v. Woodruff, 327 U.S. 726, 66 S. Ct. 853, 90 L. Ed. 970, and can serve as a premise to avoid a state court judgment only when it is presented to a federal court as an original issue. Here, even as an original issue, the claim was found to lack merit by the court below. We find no error in the finding.

Reversed and remanded with directions to vacate the injunction.

Judgment

Twelfth Day, July Term, Tuesday, August 22nd, 1961.

Before Honorable Orie L. Phillips, Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Utah and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed, that this cause be and the same is hereby remanded to the said district court with directions to vacate the injunction, and that Dairy Distributors, Inc., appellant, have and recover of and from Western Conference of Teamsters, appellee, its costs herein and have execution therefor.

Order denying appellee's petition for rehearing en banc

Seventh Day, September Term, Tuesday, October 3rd, 1961.

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable Orie L. Phillips, Honorable John C. Pickett, Honorable David T. Lewis and Honorable Jean S. Breitenstein, Circuit Judges.

This cause came on to be heard on the petition of appellee for a rehearing en banc herein, and was submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

Order denying appellee's petition for rehearing

Seventh Day, September Term, Tuesday, October 3rd, 1961.

Before Honorable Orie L. Phillips, Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the petition of appellee for a rehearing herein and was submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

(On October 14, 1961, the mandate of the United States Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.)

APPENDIX "B"

No. 856. LOCAL UNION 976 *et al., Petitioners,* v. DAIRY DISTRIBUTORS, Inc. 360 US 909, 3 L ed 2d 1259, 79 S Ct 1294, June 15, 1959. Petition for *Writ of Certiorari* to the Supreme Court of Utah, denied.

Same case below, 8 Utah 2d 124, 329 P2d 414.

Herbert S. Thatcher and Clarence M. Beck, for petitioners.

Rex J. Hanson and Walter L. Budge, for respondent.

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APPENDIX C

CHAPTER 8.—INTERSTATE COMMERCE ACT, PART II; MOTOR CARRIERS

§ 303. Definitions and exceptions—Definitions

(a) As used in this chapter—

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(15) The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation . . . under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

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§ 309. Contract carriers by motor vehicle—Permit to operate;

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(a) (1) Except as otherwise provided in this section and

in section 310a of this title, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business . . . The application for such permit shall be decided in accordance with the procedure provided for in subsection (b) of this section and such permit shall be issued or denied accordingly.

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Application for permit; form and contents; issuance of permit; terms and conditions

(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 310 of this title, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit

would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 304(a) (2) and (6) of this title . . .

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§322. Unlawful operation—Violation of chapter or rules or orders; pentlty where none *otherwise* provided.

(a) Any person knowingly and willfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

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Participation in unjust discrimination; evasion of regulations; penalty

(c) Any person, whether carrier, shipper, consignee, or broker, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give, or

solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this chapter provided for motor carrier or brokers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not less than $200 nor more than $500 for the first offense and not less than $250 nor more than $2,000 for any subsequent offense. As amended Aug. 14, 1957, Pub. L. 85-135, § 4, 71 Stat. 352.

LABOR MANAGEMENT RELATIONS ACT, AS AMENDED[1]

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purpose[s] of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, [or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—]

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[1] Portions of the Act which have been eliminated by the Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, are enclosed by brackets; provisions which have been added to the Act are in italics; and unchanged portions are shown in roman type.

[(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person:]

[(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act:]

[(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act:]

[(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.]

any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act, as amended.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

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SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301.

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(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

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DEFINITIONS

SEC 2. When used in this Act—

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(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and

which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

• • • • • • •